

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA, :  
:   
vs. : No. 966-CR-2014  
:   
CATHRYN J. PORAMBO, :   
:   
Defendant :

Cynthia Dydra-Hatton, Esquire      Counsel for Commonwealth  
Assistant District Attorney

Michael P. Gough, Esquire      Counsel for Defendant

**MEMORANDUM OPINION**

Serfass, J. - November 10, 2016

Here before the Court is Defendant's Omnibus Pre-trial Motion in the nature of a motion to suppress evidence and a motion for leave to amend and/or supplement. For the reasons that follow, Defendant's Omnibus Pre-trial Motion will be denied.

**FACTUAL AND PROCEDURAL BACKGROUND**

On June 11, 2014, the Carbon County Communications Center received an anonymous 911 phone call in which the caller reported her suspicion that Cathryn Porambo (hereinafter "Defendant") was driving her tan Cadillac sedan while intoxicated. The caller further stated that Defendant was heading toward Mauch Chunk Bank on North Street in the Borough

of Jim Thorpe<sup>1</sup>. Connie Brown (hereinafter "Informant") testified during the omnibus hearing that she was the individual who made the anonymous tip.<sup>2</sup> Informant testified that she is familiar with Defendant because she works for a law firm located in the same building as Defendant's insurance agency. She further testified that she had observed Defendant display signs of intoxication while at work and watched Defendant "stagger" into her vehicle on the day in question. Informant stated that she knew Defendant "should not be driving because of the alcohol," and feared for her personal safety as well as the safety of others. N.T. 3/14/16 at 15. On this basis, she made the 911 phone call. After placing the phone call, Informant drove to the Jim Thorpe police station to ascertain whether her concerns were being addressed. Officer Harry Brown, who had received the information from dispatch and was leaving the station to investigate the situation, briefly spoke with Informant in the adjacent parking lot. According to the officer, Informant identified herself as the tipster and conveyed the same information she had related during the 911 phone call. Officer Brown testified that he already knew the identity of the caller based upon her prior

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<sup>1</sup> It is our understanding that the caller was referring to the Mauch Chunk Trust Company which is located at 1111 North Street in Jim Thorpe. However, because all of the witnesses testifying on behalf of the Commonwealth made reference to the "Mauch Chunk Bank", we will also use that name throughout this memorandum opinion.

<sup>2</sup> Informant previously made two (2) other phone calls to the Jim Thorpe Police Department (May 30, 2014 and June 10, 2014) informing the police of separate incidents where she believed Defendant was driving while intoxicated.

phone calls and what he characterized as an "ongoing problem" of Defendant being suspected of driving under the influence of alcohol. Id. at 30-31.

The officer then drove to the Mauch Chunk Bank. He testified that he saw a tan Cadillac sedan, which he recognized as Defendant's vehicle, pull out of the bank's parking lot. He proceeded to follow the vehicle for "several blocks," during which time he observed Defendant driving at a rate of approximately ten (10) miles per hour in a posted twenty-five (25) mile per hour zone. Id. at 31-32. He noted that there were no vehicles directly in front of Defendant's Cadillac. Officer Brown also observed several vehicles lined up behind him, which he described as "bumper to bumper" and causing a traffic jam. Id. at 32-33. At that time, he activated his overhead lights and initiated a traffic stop.

Officer Brown approached the defendant's vehicle and asked Defendant for her driver's license, vehicle registration, and proof of insurance. The officer testified that he immediately detected a strong odor of alcohol emanating from Defendant's facial area and noticed that her eyes were bloodshot and glassy. Officer Brown further testified that he asked Defendant if she had been drinking that day and Defendant responded that she had not, but that she did consume alcohol the night before and that

the odor was probably from the drinks "seeping out" of her pores. Id. at 34.

Officer Brown then asked Defendant to step out of her vehicle to perform standardized field sobriety tests. He had Defendant perform a series of sobriety tests during which the officer observed clues of driver impairment.<sup>3</sup> Consequently, he contacted Jim Thorpe Police Officer Eric Schrantz for further assistance. Officer Schrantz arrived at the scene shortly thereafter and attempted to have Defendant perform an additional field sobriety test. After failing this test, both Officer Brown and Officer Schrantz took Defendant into custody and transported her to Gnaden Huetten Memorial Hospital for a blood test.

Officer Brown testified that he advised Defendant of the implied consent warning, which Defendant acknowledged. Once they arrived at the hospital, Defendant signed a consent form to have her blood drawn. The test revealed that Defendant had a blood alcohol content ("BAC") level of .087%. Consequently, Defendant was charged with one (1) count of DUI: General Impairment of Driving Safely,<sup>4</sup> one (1) count of DUI: General Impairment (BAC .08-.10),<sup>5</sup> and one (1) count of Driving Too Slow for Conditions.<sup>6</sup>

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<sup>3</sup> Officer Brown testified that he instructed Defendant to perform two (2) tests, but had to stop and restart instruction of these tests several times due to Defendant's inability to comprehend and perform them.

<sup>4</sup> 75 Pa.C.S.A. § 3802(a)(1).

<sup>5</sup> 75 Pa.C.S.A. § 3802(a)(2).

On December 18, 2014, Defendant filed the instant "Omnibus Pre-trial Motions" seeking, *inter alia*, to suppress evidence obtained as a result of the traffic stop. A hearing on that motion was held on March 14, 2016, and reconvened on May 16, 2016.<sup>7</sup> Briefs were submitted by counsel for Defendant and counsel for the Commonwealth on June 13, 2016 and June 23, 2016, respectively.

### **DISCUSSION**

#### **I. MOTION TO SUPPRESS**

Defendant argues in her suppression motion that the Commonwealth failed to meet its burden with respect to demonstrating that Officer Brown had probable cause to conduct the traffic stop at issue. Defendant's argument focuses on the lack of reliability of the anonymous tip. She contends that the tip did not come from a known informant and, therefore, carries a low indicia of reliability. Defendant also argues that the Commonwealth failed to meet its burden with respect to showing that the tip held a high enough level of reliability to constitute reasonable suspicion to justify Officer Brown's

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<sup>6</sup> 75 Pa.C.S.A. § 3364 (a).

<sup>7</sup> In the intervening period between the filing of Defendant's Omnibus Pre-Trial Motion and the hearing, Defendant filed a Motion for Recusal on June 26, 2015. On October 5, 2015, this Court entered a memorandum opinion and order denying Defendant's Motion for Recusal. Defendant then sought review of this matter by the Pennsylvania Superior Court. On January 15, 2016, the Superior Court entered an order denying Defendant's "Petition for Review and Stay of Proceedings" and the Omnibus Pretrial Motion was scheduled for an evidentiary hearing on March 14, 2016.

course of action in following and stopping Defendant's vehicle based upon the content of the tip. Specifically, Defendant relies upon Florida v. J.L., 146 L. Ed. 2d 254 (U.S. 2000) for the proposition that the anonymous tip made to the police on the day of the stop lacked the indicia of reliability necessary to warrant the traffic stop that led to Defendant's criminal charges. Accordingly, Defendant claims that any and all evidence obtained during the stop should be suppressed.

Conversely, the Commonwealth contends that the information provided by Informant contained sufficient indicia of reliability to investigate the tip based upon the identification of the tipster and the content of the tip. In its argument, the Commonwealth relies upon Navarette v. California, 188 L.Ed.2d 680 (U.S. 2014). According to the Commonwealth, the predictive location of where Defendant's vehicle would be found was corroborated by Officer Brown's observation of the vehicle at the Mauch Chunk Bank. Therefore, the Commonwealth maintains that it has met its burden.

As an initial matter, we note that the Commonwealth bears the burden at a suppression hearing "of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant's rights." Pa.R.Crim.P. 581(h). Moreover, both the Fourth Amendment to the United States Constitution and Article I, Section 8 of the

Pennsylvania Constitution prohibit "unreasonable searches and seizures." U.S. Const. Amend. IV; Pa. Const. Art. I, § 8.

It is well established that "when the police stop a vehicle in this Commonwealth for investigatory purposes, the vehicle, and its occupants are considered 'seized' and this seizure is subject to constitutional constraints." Commonwealth v. Knotts, 663 A.2d 216, 218 (Pa. Super. 1995). An investigatory stop of an automobile is justified only when it is based upon objective facts creating a reasonable suspicion that the vehicle's occupants are presently involved in criminal activity. Commonwealth v. Valenzuela, 597 A.2d 93, 98 (Pa. Super. 1991). To meet this standard, the officer must point to specific articulable facts which, together with the rational inferences therefrom, reasonably warrant the intrusion. Commonwealth v. Williams, 615 A.2d 416, 419 (Pa. Super. 1992), *alloc. denied*, 624 A.2d 110 (Pa. 1993).

To have reasonable suspicion, police officers need not personally observe the illegal or suspicious conduct, but may rely upon the information of third parties, including "tips" from citizens. Commonwealth v. Swartz, 787 A.2d 1021, 1024 (Pa. Super. 2001). In Commonwealth v. Wilson, 622 A.2d 293 (Pa. Super. 1993), *alloc. denied*, 637 A.2d 283 (Pa. 1993), the Pennsylvania Superior Court examined the requirements

surrounding reasonable suspicion for automobile stops emanating from information provided by a tipster and explained:

Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors-quantity and quality-are considered in the "totality of the circumstances-the whole picture," that must be taken into account when evaluating whether there is reasonable suspicion. Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were reliable.

Id., at 295-96 (citations omitted).

The Pennsylvania Supreme Court has recognized that an anonymous tip, corroborated by independent police investigation, may exhibit sufficient indicia of reliability to supply reasonable suspicion for an investigatory stop. Commonwealth v. Brown, 996 A.2d 473, 477 (Pa. 2010) (citation omitted). However, "a known informant is far less likely to produce false information." Id. In fact, a known informant's tip may carry sufficient "indicia of reliability" to justify an investigative detention despite the fact that it may prove insufficient to support an arrest or search warrant. Id. A tip from an informer known to the police carries greater indicia of reliability than does information received from an anonymous caller because "a known informant places himself at risk of prosecution for filing a false claim if the tip is untrue, whereas an unknown informant faces no such risk." Commonwealth v. Swartz, Supra. at 1024-25.



As has been pointed out by Defendant, the United States Supreme Court held in J.L. that a "bare-boned" anonymous tip that contained details of identification of a suspect was not sufficient to constitute a search of the suspect. Florida v. J.L., 146 L. Ed. 2d 254 (U.S. 2000). In that case, the anonymous tip was that there was a black male, in a plaid shirt, at a bus stop, carrying a gun. Id. When police responded to the call and arrived at the scene, they saw a black male in a plaid shirt, but did not notice a weapon or observe the man displaying any signs of aggressive or threatening behavior. Id. Based upon the description contained in the tip and a male matching that description, the police searched the suspect and found a weapon on his person. Id. The Supreme Court held that, without observing any indication that criminal activity was afoot, the stop and arrest of J.L. were unconstitutional. Id. The Court found that the anonymous tip provided mere details of identification and did not give the police reasonable suspicion to justify a search. Id.

In Navarette, 188 L.Ed.2d 680, the United States Supreme Court distinguished J.L. There, a 911 anonymous call was made informing police that a vehicle had run the caller off the side of the road and that he believed the driver of that vehicle was intoxicated. Id. The tip included the make and model of the vehicle, the license plate number, and the direction in which

the vehicle fled. Id. Police responded moments later to the location and observed a vehicle that matched the description. Id. The Supreme Court found that the tip was reliable based upon, *inter alia*, police confirming the location of the vehicle and the contemporaneous report by the tipster. Further, there was reasonable suspicion of drunk driving. The Court noted that the 911 caller reported more than a minor traffic infraction and more than a conclusory allegation of drunk or reckless driving. Id. Instead, the tipster alleged a specific and dangerous result of the driver's conduct: running another vehicle off the roadway. Id. Therefore, the Court concluded that it was reasonable, under the circumstances, for the officer to execute a traffic stop. Id. Nevertheless, the Court acknowledged that there is more than one way to demonstrate "a particularized and objective basis for suspecting the particular person stopped of criminal activity." Id.

In the case *sub judice*, Informant testified that she placed the 911 phone call to the Carbon County Communications Center after observing Defendant display signs of intoxication at work prior to staggering into her vehicle. Informant provided Defendant's name, a description of her vehicle, and predicted the direction that Defendant would be driving as well as her destination. Moreover, Informant drove to the police station and spoke with Officer Brown regarding her concerns. Officer Brown

testified that he spoke with Informant, who identified herself as the tipster and relayed the same information he had received from dispatch. The facts of this case present more than mere identification of Defendant. Officer Brown corroborated the information in the tip by observing Defendant's vehicle pulling out of the parking lot at Mauch Chunk Bank. This predictive information, coupled with Informant's previous telephone calls and the conversation in which she informed the officer that she was the tipster, provides sufficient indicia of reliability to investigate the tip. Moreover, the officer testified that he followed Defendant's vehicle for "several blocks," during which he observed Defendant driving at a speed of approximately ten (10) miles per hour in a posted twenty-five (25) mile per hour zone. N.T. 3/14/16 at 31-32. He noted that there were no vehicles directly in front of Defendant. Officer Brown also observed several vehicles lined up behind him, which he described as "bumper to bumper" and causing a traffic jam. Id. at 32-33. At that time, he activated his emergency lights and sirens, and initiated a traffic stop.

We find that Officer Brown's receipt of the tipster's information from the dispatcher, which specifically identified the defendant, described the make, model and color of her vehicle and predicted her destination, coupled with the nature of the offense, driving under the influence, created reasonable

suspicion warranting the investigatory stop. In so finding, we note that Officer Brown, upon receipt of the information from the Communications Center, wrote down that information on a piece of paper and immediately left the police station to search for Defendant's vehicle in the area of the Mauch Chunk Bank. N.T., 3/14/16, at 29-30. Upon leaving the station, he encountered Connie Brown who identified herself as the tipster and reiterated the information she had provided to the Communications Center. Officer Brown acknowledged and recognized Connie Brown, informed her that he was aware of the situation and proceeded to the area of the Mauch Chunk Bank where he observed a tan Cadillac sedan pulling out of the bank's parking lot heading south on North Street. Id. At 31.

This case is akin to Commonwealth v. Janiak, 534 A.2d 832 (Pa. Super. 1987) wherein the police were provided with a tip relayed by a radio report and, moments later, were able to locate the vehicle. Specifically, the police officers were informed by two radio communications that a person was driving a vehicle under the influence of alcohol and within minutes the officers saw a vehicle driving on the exact roadway and coming from the exact direction as that reported. The Superior Court ruled that under the circumstances, the police officers acted with reasonable suspicion in effectuating the stop. Moreover, in Janiak, the police stopped the defendant's vehicle without

first corroborating the report of drunk driving via any personal observations.

Here, Officer Brown was informed by dispatch that Defendant was operating a tan Cadillac sedan under the influence of alcohol and, within ten minutes, he observed Defendant operating the described vehicle exiting the exact location as that reported by the tipster. On this basis alone, Officer Brown had a legal basis to stop Defendant's vehicle and investigate her condition. We find Defendant's arguments to the contrary to be without merit.

## **II. MOTION FOR LEAVE TO AMEND AND/OR SUPPLEMENT**

We note that Defendant also filed a motion for leave to amend and/or supplement the instant omnibus pre-trial motions but did not make any request nor advance any argument in that regard. Therefore, we must conclude that Defendant does not desire to pursue the aforesaid motion.

## **CONCLUSION**

For the reasons set forth hereinabove, Defendant's Omnibus Pre-trial Motion will be denied and we will enter the following:

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Cynthia Dydra-Hatton, Esquire	Counsel for Commonwealth
Assistant District Attorney	

Michael P. Gough, Esquire	Counsel for Defendant
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**ORDER OF COURT**

**AND NOW**, to wit, this 10<sup>th</sup> day of November, 2016, upon consideration of Defendant's Omnibus Pretrial Motion, review of the parties' briefs, and after hearing held thereon, and in accordance with our Memorandum Opinion bearing even date herewith, it is hereby **ORDERED and DECREED** as follows:

1. Defendant's Omnibus Pretrial Motion in the nature of a motion to suppress evidence is **DENIED**;

2. Defendant's Omnibus Pretrial Motion in the nature of a motion for leave to amend and/or supplement said motion is **DENIED**; and

3. Defendant and her counsel shall appear for a pretrial conference at 9:00 a.m. on December 15, 2016 in the Office of the District Attorney of Carbon County on the second

floor of the Carbon County Courthouse at Jim Thorpe,  
Pennsylvania.

**BY THE COURT:**

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**Steven R. Serfass, J.**